

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**TRI-STATE BIODIESEL, LLC**

**Plaintiff,**

**-vs-**

**ENVIRONMENTAL ENERGY RECYCLING  
CORPORATION, LLC**

**Defendant.**

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**COMPLAINT**

**CIVIL CASE NO: 08 CIV 2997  
(RMB)**

The Plaintiff, as and for a Complaint, alleges as follows:

**PARTIES**

1. Plaintiff, Tri-State Biodiesel, LLC ("TSB") is a Delaware limited liability company duly authorized to conduct business in the State of New York with a place of business at 36 East 23<sup>rd</sup> Street, 9<sup>th</sup> Floor, New York, New York 10010.

2. Defendant, Environmental Energy Recycling Corporation, LLC ("EERC") is a New Jersey company with a principal place of business at 927 North Meadow Street, Allentown, Pennsylvania 18102.

**JURISDICTION**

3. This Court has original jurisdiction of all civil actions between citizens of different states in which the amount in controversy is over Seventy Five Thousand Dollars (\$75,000.00) pursuant to 28 U.S.C. §1332(a).

4. TSB is a Delaware company with a principal place of business in New York City.

5. EERC is a New Jersey company with a principal place of business in Allentown, Pennsylvania.

**VENUE**

6. This lawsuit arises out of a contract executed by the plaintiff and defendant on June 15, 2007, in New York City as subsequently modified by the parties.

7. The services provided by the plaintiff pursuant to their contractual relationship involved the transfer of Waste Cooking Oil from TSB's ownership and control to EERC's ownership and control at TSB's storage facility located in Brooklyn.

8. The services provided pursuant to the contract between TSB and EERC were provided exclusively in the Southern District of New York.

9. The plaintiff's principal place of business is in New York City.

10. Venue is proper in the United States District Court, Southern District of New York.

### **FACTUAL BACKGROUND**

11. On June 15, 2007, TSB and EERC entered into a Waste Cooking Oil Sales Contract establishing the terms by which TSB would sell waste cooking oil to EERC.

12. The Waste Cooking Oil Sales Agreement Consulting Agreement contemplated TSB would sell between twelve and twenty four thousand gallons of waste cooking oil per week to EERC at a price set according to the terms of the contract. EERC was allowed thirty days from delivery of the product to make payment to TSB.

13. The June 15, 2007 was subsequently modified by the parties to extend the agreement beyond January of 2008 and to set a new price for the product of \$1.00/gallon beginning in January of 2008.

14. On January 7, 2008, TSB delivered approximately 6500 gallons of waste cooking oil to EERC and invoiced EERC \$6,500.00.

15. On January 9, 2008, TSB delivered approximately 5900 gallons of waste cooking oil to EERC and invoiced EERC \$5,900.00.

16. On January 11, 2008, TSB delivered approximately 6500 gallons of waste cooking oil to EERC and invoiced EERC \$6,500.00.

17. On January 14, 2008, TSB delivered approximately 6500 gallons of waste cooking oil to EERC and invoiced EERC \$6,500.00.

18. On January 15, 2008, TSB delivered approximately 6500 gallons of waste cooking oil to EERC and invoiced EERC \$6,500.00.

19. On January 18, 2008, TSB delivered approximately 6500 gallons of waste cooking oil to EERC and invoiced EERC \$6,500.00.

20. On January 21, 2008, TSB delivered approximately 6500 gallons of waste cooking oil to EERC and invoiced EERC \$6,500.00.

21. On January 23, 2008, TSB delivered approximately 5800 gallons of waste cooking oil to EERC and invoiced EERC \$5,800.00.

22. On January 24, 2008, TSB delivered approximately 5800 gallons of waste cooking oil to EERC and invoiced EERC \$5,800.00.

23. On January 28, 2008, TSB delivered approximately 6500 gallons of waste cooking oil to EERC and invoiced EERC \$6,500.00.

24. On January 31, 2008, TSB delivered approximately 6500 gallons of waste cooking oil to EERC and invoiced EERC \$6,500.00.

25. On February 5, 2008, TSB delivered approximately 6500 gallons of waste cooking oil to EERC and invoiced EERC \$6,500.00.

26. On February 6, 2008, TSB delivered approximately 6500 gallons of waste cooking oil to EERC and invoiced EERC \$6,500.00.

27. On February 11, 2008, TSB delivered approximately 12,850 gallons of waste cooking oil to EERC and invoiced EERC \$12,850.00.

28. EERC accepted each of the aforementioned invoices without objection as to the amount of waste cooking oil received or to the price of the waste cooking oil.

29. Each of the aforementioned invoices remains unpaid.

**AS AND FOR A FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT**

30. Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "29" above as though fully set forth herein at length.

31. TSB and EERC entered into a binding contract in which TSB would deliver waste cooking oil to EERC at a price that increased to \$1.00/gallon in January of 2008.

32. TSB has fully performed pursuant to the contract, but EERC has breached the contract by failing to make payment for the waste cooking oil delivered.

33. Upon information and belief, TSB is damaged in the amount of Ninety Five Thousand Three Hundred Fifty Dollars (\$95,350.00) plus interest as a result of EERC's breach of the contract.

#### **AS AND FOR A SECOND CAUSE OF ACTION FOR UNJUST ENRICHMENT**

34. Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "33" above as though fully set forth herein at length.

35. EERC received the benefit of the receipt of ninety five thousand three hundred gallons of waste cooking oil in January and February of 2008 for which TSB has not received any compensation.

36. Upon information and belief, TSB is entitled to damages equal to the market value of the waste cooking oil delivered to EERC in an amount equal to the market value of the waste cooking oil.

37. Upon information and belief, TSB is entitled to damages in the amount of Ninety Five Thousand Three Hundred Fifty Dollars (\$95,350.00) pursuant to its cause of action for unjust enrichment.

**AS AND FOR A THIRD CAUSE OF ACTION FOR CONVERSION**

38. Plaintiff repeats and realleges each and every allegation set forth in paragraphs "1" through "37" above as though fully set forth herein at length.

39. Upon information and belief, EERC exercised control of TSB's waste cooking oil to which it was not authorized nor entitled to control.

40. Upon information and belief, EERC's possession of TSB's waste cooking oil interfered with TSB's superior possessory right to the waste cooking oil.

41. Upon information and belief, EERC's conversion of TSB's waste cooking oil damaged TSB in the amount of Ninety Five Thousand Three Hundred Fifty Dollars (\$95,350.00).

**WHEREFORE**, the plaintiff demands a money judgment in the amount of \$95,350.00 together with such other and further relief as the court deems just and proper.

Dated: March 20, 2008

By: *Js Joshua A. Sabo*  
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